Title: Discussion regarding Code of Civil Procedure (Amendment) Bill, 1999 (Not concluded).

1434 hours

सभापति महोदय : अब आईटम नम्बर १३ - सिविल प्रक्रिया संहिता (संशोधन) विधेयक, १९९९ लिया जाता है। इसका समय दो घंटे नियत किया गया है।

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Sir, I do not think this will require two hours. It may be finished much before that.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): That is the maximum time limit. It cannot go beyond that.

SHRI RAM JETHMALANI: With the cooperation of this House, I think there should be no problem.

Sir, I beg to move:

"That the Bill further to amend the Code of Civil

Procedure, 1908, the Limitation Act, 1963 and the

Court Fees Act, 1870, as passed by Rajya Sabha, be

taken into consideration."

Sir, I might mention and all hon. Members of this House will agree and the entire people of India will agree - except the dishonest litigants who will have a different opinion - that the greatest blot today on the face of our judicial system is the law delays. Everybody has agreed that some drastic steps have to be taken to remove or eliminate the law delays.

A lot of steps are contemplated. The amendment to the Civil Procedure Code is only one of those steps. I do not pretend that this will solve the problem. It is not a complete solution of the problem. But, Sir, it is one good step forward in the direction of the objective which we all hold dear.

I might briefly explain first the sources of wisdom on which this Bill is based. One is that there was a Law Ministers" Conference held in June-July, 1997. This draft paper was considered by them and there was the unanimous support of the Law Ministers" Conference of 1997. Then the Law Commission applied its mind to it and made a comprehensive 129th Report of the Law Commission which suggested some slight amendments and so on. Those were respectfully considered and incorporated. Then we had a Committee of the Parliament on Subordinate Legislation which considered this problem and some of the suggestions they made have also been incorporated.

Then, there was the Justice Mallimath Committee which also had made a very in-depth study of the problems of arrears in courts. The amendments which were suggested by them also find a reflection in this.

So, this is the application of mind of experts which has taken place in the drafting of this Bill. I claim no credit for it. This is one of those Bills which I have inherited. I wish to pay a tribute to the previous Law Minister who brought this Bill before the House but it could not be passed because of the dissolution of the Lok Sabha. Now, it has been passed by the Rajya Sabha and it is here for consideration.

We have reduced the timeframe for service of summons and return of the response of the parties. We have insisted on filing of Affidavit so that anybody who makes a false claim or a false defence is liable to prosecution, for perjuries. This will discourage false defences. Then we have provided for quick service and quick written statement and defence being filed.

The most important part of this amendment is that a part of it is really a sequel to the new arbitration law, modernised arbitration law which is in accordance with the international standards of arbitration which was passed by Parliament in 1996 and some consequential provisions have to be made. We have almost made it now compulsory for the courts before trying a suit, to refer it out for conciliation, mediation and arbitration. This is the

latest philosophy of settlement of disputes or the alternative dispute-settlement mechanism. We have incorporated it in the Civil Procedure Code.

Then, there is a facility for recording evidence. We have borrowed this from the English and American practices. The courts have really no time these days particularly in view of the number of courts which we require. The Law Commission has said that we have to increase the number of Judges by five times. For every one Judge today, there have to be five Judges which means four more Judges have to be appointed. Allowing most of the evidence to be produced in the form of Affidavit first of all and then the other side can always cross-examine that shortens delays and if there is to be recording of evidence, it can take place before the Commissioners rather than the court. So, this is really increasing the number of courts without technically increasing them and that also will be a very, very serious step.

A complaint was made the other day in this House that people obtain injunctions or interim orders from the court ex parte and then try to delay the proceedings so that the courts have no time to consider these things and injustice is perpetrated and sometimes serious damage is caused. We have provided that he who asks for interim relief will give security for compensating the other side if his application turns out to be frivolous or he does not wish to prosecute it.

Then we have disposed of one tier of appeal. In the High Court if an appeal is decided by a single Judge of the Court, then appeal will

directly lie to the Supreme Court.

We are abolishing the intermediate appeal in the High Court, to two judges of the Court. The High Courts, by their rule-making power, can insist that writ matters can come before a Division Bench so that the first decision itself is by two judges, by which way the appeal will go to the Supreme Court.

Sir, we have provided an incentive to settlement that if you really settle a dispute and do not trouble the court, there will be full refund of the court fees which you have paid so that this is going to be some kind of an incentive to the parties to settle the dispute.

I submit that this is a very non-controversial measure. If any hon. Member has further suggestions to make, they will be respectfully considered. We are prepared to incorporate them in a further amendment to the Civil Procedure Code. But this Bill, as passed by the Rajya Sabha, may now be passed by this House so that it does not have to go back and we waste time. Sir, we have a very little time left. I am most anxious that this law should come into force. Of course, it will come into force in some cases with retrospective effect, but wherever the prospective operation is insisted upon, that is expressly provided.

So, I commend this Bill for consideration and passing.

(ends)

MR. CHAIRMAN : Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, the Limitation Act, 1963 and the Court Fees Act, 1870, as passed by Rajya Sabha, be taken into consideration."

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Mr. Chairman Sir, during the last 30 years, there has been an incredible increase in the volume of litigation that the courts of our country have had to deal with. It may be because of the rise in population, the rise in level of awareness among the people about their rights and the increasing complexities and dimensions of the laws that we are enacting over the years and also the complexity and dimensions of the human activity, but the fact remains that all these factors have contributed significantly in flooding the courts with new cases while the old ones continue to be stacked in the shabby shelves which, as we experienced in Chandigarh, are exposed to the risks like that of a fire.

">Sir, with over two crore of cases pending in all the courts, the justice-delivery system - the hon. Minister would agree with me - itself is under severe strain. Only the other day, he informed us, in reply to a question, that at present, there are 32 lakh cases pending in the various High Courts alone and over 20,000 cases are pending in the Supreme Court itself. Sir, imagine the plight of a litigant who wastes away, who melts away his entire life-span in pursuing a case right from the lower court up to the Supreme Court and then, has to suffer a remand, a situation where the case actually takes over 40 years in culmination. These exasperating delays, coupled with the expense involved, are sheer back-breaking.

">I am happy that the hon. Minister has taken cognizance of that and has brought forward this Bill for discussion in this House at the earliest possible opportunity which aims at cutting the proverbial "laws" delays", which in fact leads to denial of justice, as we have often experienced. Sir, the situation, we all agree, is very grave. It is not finding fault with the hon. Minister. I am convinced with his determination to see that, as I said the other day also, the laws of the country really work; we all owe an explanation to the poor litigants that our response to the gravity of the situation has not been commensurate with the problem.

">The hon. Minister while piloting the Bill referred to the need to increase the strength of the judges five-fold.

">Well, Sir, maybe, there are constraints, like resources, which should not come in the way, when the question of delivery of justice comes. But I have a point to make and I would expect something immediate even from the hon. Minister, who is a legal luminary and who has a long experience in these things himself. Why do we take inordinately long time in filling the vacancies? We know always in advance that a particular judge of the High Court has to retire on such and such a date. In normal course, if you really mean business, the procedure for filling that vacancy should start, at least, six months before the vacancy arises. But what really happens is that the judge retires, no steps are taken to fill in the vacancy, or if steps are taken, there is a lot of procedural wrangling or the files keep shuffling from the court to the Chief Minister, to the Law Ministry, to the Home Ministry, and it goes on. We are faced with situation where the High Courts have to function with greatly depleted strength of judges, and if that happens, the result would be only what we have before. Sir, the cases keep piling up, new cases are filed without any decision, and more and more access of cases pile up. Today, we are facing a situation where even those regular second appeals, which, of course, he is doing away with now - I would welcome that - even those paltry matters take over 20 years to mature for hearing in the High Courts. The appeals filed in the early 1980s have yet not been taken up. That is the situation which we have, and that would only lead to frustration amongst the litigants.

">Sir, when the hon. Minister referred to the need of increasing judges, I was reading somewhere that, perhaps, there was a recommendation or a demand by the Chief Justice of India that, at least, 5,000 judges in the lower courts should be appointed. Only then, we will be able to cope with the volume of work which we presently have to face. Besides, as I was trying to make that point, creation of new posts is one thing, filling of the existing vacancies is another thing. If we do not really come up to that, I think, we have to blame ourselves for a situation like that. When I was talking of the High Court judges, that there are always inordinate delays in filling vacancies there. The hon. Minister would also appreciate that even in the courts below, at present, there are over a thousand vacancies. If I am not mistaken, if my information is not incorrect, there are over 1,000 vacancies even in the lower judiciary.

">Sir, today, when we boast of the strides that we have made in the field of science and technology - when we have a new Ministry carved out, that is - Information Technology - which has revolutionised our action, thought and vision, despite the fact that there are certain amendments now suggested which would cut delays here and there, everywhere in the procedure involved in the decision of cases, the picture which the courts below present today is that of utter chaos. We all talk of information technology, as I was saying, but go to any of the courts below, go to any moffusil court you will have typewriters of Adam"s days, which are 50 years or 60 years or 70 years or 80 years old. Those are the gadgets on which the poor judgment writer has to type out the judgment and hand it over to the

litigant. If the litigant makes photocopies of that, the judges of the High Court would throw them away because those are not comprehensible or are illegible altogether. So, when we make provisions like this, when we provide in this present Bill - I again commend that - that the copies of the judgments have to be delivered immediately on pronouncement I think, at the same time, greater emphasis should be there on providing the necessary infrastructure to all the courts.

">Sir, it is a pity that our investment on Judiciary, all inclusive, is a meagre 0.2 per cent of our GNP. Justice has to be delivered; justice has to be imparted to the people; it is not to be sold. I am against the increase in the Court fees. We already have very high Court fees. It is the responsibility of the State. This is one of the basic functions which the State must undertake to perform; and equip all the Courts, all over the country, with the latest gadgets.

">Sir, there is a provision being made for issuing and service of summons through couriers, E-mail and Fax. I welcome that. But where is the infrastructure? I think, all these things -- these would not cost much -should be provided for in all the Courts. The earlier practice of handing over the summons to the litigants and asking them to send them by registered post and then deliver the copy of the receipt to the Registry of the Courts should not really be adhered to again. But I find something like that again, that a man at his own cost, besides depositing the summons fee in the Registry, would be called upon to ensure that it is delivered at his expense. I think that would leave some room for manipulation and other things, as it often happens that some fraud is played some time. All these E-mail and Fax facilities should be provided for in the Courts so that immediately when the judges order the issuance of summons, those are sent from the Courts itself.

">Sir, I referred to certain demands made by the Head of the Judiciary, that is, the Chief Justice of India. I think, he is right when he bemoans or perceives some sort of an apathy on the part of the Government towards the judicial administration. These are matters with which he is concerned. We do expect the Judiciary to deliver goods. But at the same time, all the necessary basic infrastructure has got to be provided to them without any loss of time. That is my humble submission.

">Sir, I referred to the various contributory factors which have led to this barrage or flood of litigation in the Courts. This has, as I said earlier, something to do with the radical changes in the pattern of litigation. What we can do now is to have a comprehensive exercise in doing away with the archaic laws that we have. Only the other day, the hon. Minister was informing us here that, perhaps, there are over a thousand such laws which do need amendment or complete abrogation. I know, it is a very stupendous task. It cannot be carried out overnight. But this has to be done on a war-footing. It should not be that a small cell is created which would take up one law from time to time, then we would take years to do that. One major exercise has to be carried out immediately.

">Sir, I find that while we are concerned about this, at the same time, when we are framing new laws, we are referring to the provisions of the old laws. The other day we were discussing the prevention of Money Laundering Bill. There, we were referring to some laws, like the FERA which was replaced by FEMA that very day. This is, of course, a very minor thing. I should not take the time of the House by mentioning that. What I mean to say is that we have got to carry out an in-depth study of all the laws and wherever there is a need to amend or do away with a particular provision we must do it at the earliest.

">Sir, without any reservation I commend this present exercise which is aimed at doing the same thing. The Code of Civil Procedure has had so far many in-built provisions which have led to delay in delivering judgements in the cases. The procedure, as it is being simplified now, is the right step in the right direction. It meets, to a certain extent, a long-felt need to simplify the procedural law. I think, when these amendments are brought into force there will be some gearing up of the courts and picking up of speed in deciding the cases.

">I feel that these amendments would certainly knock down certain devices being presently used by the unscrupulous litigants, the section of the society which hon. Minister referred to as perhaps the only one section which may not like these present amendments. Over the years what we have seen is that amendments were being sought on frivolous grounds. Now, the mandate would be, "no more amendments of pleadings than three in all and for a total period of not exceeding one month." I think that is fair enough.

">Recording of evidence which would now be drastically changed is a welcome step. The evidence would initially be recorded through affidavits, thereafter before the Commissioners who could be lawyers of that court. In any case, the judge trying the matter would refer to one of the persons on a panel prepared for that purpose. That would certainly save time and expense. Evidence would be recorded outside, transmitted to the file and the matter thereafter would be decided by the court.

">Experience has shown us that amendment of pleading has also been in the past resorted to on quite a few occasions by the litigants to delay the proceedings. But, Sir, permit me to say that despite that this is one invaluable right which should be retained with the litigants. I do not have much difficulty with present amendments as such. But, I have suggested one amendment to the provision which seeks to omit Rules 17 and 18 of Order VI which relate to the amendment of pleadings. I know that Section 153 is the substantive provision in the Code of Civil Procedure which gives the right to the litigant to move for an amendment. But, I think, if we go by the wording of Section 153 as also these two Rules 17 and 18, these later provisions are more elaborate, more explicit and more clear. Therefore, Sir, I thought that while we should be concerned with this being used as a device by people to delay the proceedings, at the same time this right has to be retained. Therefore, I thought that Order VI, Rule 17 should be retained and there should be an amendment to only Order VI Rule 18 whereunder we could limit or restrict this right of amendment. At the moment this takes inordinately long time. Against the Order permitting or refusing to file or to make an amendment, a person goes to the High Court to file a revision petition and when interlocutory proceedings begin a lot of time is again taken. I think that could be restricted. But this provision as such should be retained for the benefit of the public.

15.00 hrs.

Take the case where a person dies leaving behind young children. They may have no idea as to what was his property, what was his interest, where was that property, and all that. If they file a suit somewhere, subsequently while going through the papers at their residence, they come across some more piece of supportive evidence to lay a better claim of something. Then, what will happen? I know, Section 153 could be invoked. About the deletion of these provisions. I would be grateful if the hon Minister clarifies that. But if we were to have all the rights to amend then why did we do away with these provisions? We should make an appropriate amendment

there and retain these provisions. That is my humble submission.

Sir, here I agree with the hon. Minister. The best thing that I find in the present amendment is that henceforth, emphasis would be laid on the alternative dispute-resolution course. Sir, there was a time when the courts did not consider it acceptable. They did not even consider it acceptable to talk of the resolution of disputes otherwise than through their good offices. They would not tolerate anything. Then came the time when the law of arbitration came into force, and somehow that was also accepted. Well, certain disputes could be settled through arbitration, but as we know, many problems always cropped up, and that law did not really take off. But the law relating to arbitration, which we presently have on the Statute Book, is a good piece of legislation which was brought about four years back.

Sir, I think, now it will be a real refreshing change to find the courts first referring the matters to arbitration, conciliation, mediation, etc., and thereafter, in case, the matter is not sorted out or not solved, will come back to the courts again.

Certainly, recourse to arbitration over these long drawn court proceedings, as we have always experienced, bogged down by procedural wrangles would really be a good change in our procedural system. Sir, with this provision being incorporated in the Civil Procedure Code, I think, we can now look forward to a hassle-free, just and expeditious disposal of cases.

There is another good thing. There may be some need to make rules regarding refund of the court fee. In case, the matter is referred for alternative dispute resolution and it is resolved there, then elaborate rules have got to be made for that, that the court fee subtracting only the incidental expenses which are incurred on the arbitration etc., which, may be the arbitrator fixes himself, should be refunded. But that should not be more than the court fee. In all such cases, the court fee should be refunded forthwith to the litigants.

Sir, as we have again seen, the delays are also caused by the fact that a right has been accorded to the litigants to keep on challenging the orders of the court below, in the High Court -- appeal, appeal against that appeal, LPA, and then SLP in the Supreme Court etc. I commend this provision where the pecuniary limit for filing the second appeal is raised to Rs. 25,000. That is my first point.

My second and the most important point is about curtailing the right to appeal against the judgment of a single judge to the same High court. This is a good provision. This would certainly reduce the burden on the High Courts. Sir, I made a mention of the attitude of the Government while participating in the debate on the last Bill and I would like to reiterate that point again that today, undoubtedly, the Government is the biggest litigant in the country. It is no surprise that it is also the biggest loser.

Here again the hon. Minister would correct me if I am mistaken because my information is based only on the news items appearing in the media from time to time that over 90 per cent of the Government cases fail. Often we find that the individual and ordinary litigant is dragged to the courts in many many cases only as an ego trip of the concerned bureaucrat. They feel : "This man is challenging my order. All right. He has won in the first court and so I must drag him to the second court." This attitude of the Government has to change. The Cell within the Government may be fortified, may be expanded, may be strengthened. They should decide there and if an honest decision is taken, no honest officer need fear anybody when he is writing on the file that this case need not be proceeded with further and nobody would question him. Ego hassles may be the reason today, as I have said. The second is to pass on the buck " Why do I care? Why should I give some opinion that this case need not be taken further to the court? Why should not they? That is the responsibility and that is their duty to perform. If they feel that there is nothing in the case, they should not go for that." I think to change the environment regarding litigation in the country, the hon. Minister would really find support from all sections of the House and from outside also, if the Government were to decide that they cut down their expenditure on litigation and cases are not filed the way they are now filed. Perhaps we have never given a serious thought to it, but I am sure the hon. Minister would now come out with a litigation policy for the Government.

Sovereignty vests with the people. The State only represents the people and all its actions are to be for the ultimate good of the people. Why should, therefore, instrumentalities of the State keep preferring these appeals from one court to another? I would like to say - I have not moved an amendment to that effect - that the right to move files for filing an appeal should vest with an Officer only if he gives in writing the reasons for preferring an appeal in public interest. Of course, as I have said, the Government always proclaims that its avowed object is to work for the good of the people. I can understand if a case involves interpretation of law, it is fine and good enough, because that is in the public interest. But just now I have said, if an officer does not agree with a particular decision given by the court, on facts alone should be still file an appeal.

MR. CHAIRMAN : Please conclude now.

SHRI PAWAN KUMAR BANSAL : I have taken time to refer to this particular tendency. There are not many speakers from our side. Kindly give me more time. I would like to refer to one or two points before - going by your command and resuming my seat.

सभापति महोदय : यहां ज्यादा समय लगाने से काम में देर होती है।

श्री पवन कुमार बंसल : यहां पर हमें ज्यादा समय लगाने देना चाहिये, तब काम ठीक होता है।

There is a provision made here that wherever there is a pronouncement of the judgment, the copy of the judgment would be made available simultaneously. This is a very good provision. But I do not know. I have only a lurking doubt in my mind that when the judge dictates the judgment in the court, does he make the pronouncement then and there only or not? If it is not, then it will be difficult to give the copy there and to know from when would the period of limitation start running because that provision is also being removed from the Statute Book about the time given to a person to obtain the copies of judgment etc.

One more good provision I must refer to is that there is a new provision for an inspection before the institution of a suit. This is a good provision. To avoid certain subsequent delays, a person can approach the Court immediately and the property about which he intends to file may be got inspected by a commission. This is a good provision.

It further says that the person who is competent to file a suit must file it within seven days. In the notes to the clauses of the Bill it is said that if that person is away some other member of the family may move the application. In that event, I think, this period has to be

increased because if a person is away and somebody files an application, it would then entail the filing of the suit within seven days which may not be physically possible. Since the hon. Minister said that he would welcome suggestions, this is only a suggestion because it should not work as a hardship on a person wanting to file a suit subsequently.

To conclude, I would only say that a good beginning has been made as far as the Code of Civil Procedure is concerned. A similar approach is immediately called for regarding the disposal of criminal cases also. It is a pathetic situation that for very petty offences people rot in the jails for years together. Matters are not taken up for long periods of time. For the smallest discrepancy, the person has to remain behind the bars as undertrials. For very small offences, for which even the possible duration of sentence might have run out, they are not able to come out. Since today''s matter relates only to the Code of Civil Procedure, I do not want to refer to that but I would, as a passing reference, urge the hon. Minister to immediately bring forth an amendment to that effect also. I would also urge the hon. Minister at the same time to desist from the tendency overtaking the Government today that whenever you make some law, you provide for elaborate procedure therein. I can understand that it is called for in some special cases. Otherwise, we should stick to the simple laws which are easy to understand and administer and avoid making multiplicity of procedural laws.

With these words, I welcome this piece of legislation. I support the Bill requesting the hon. Minister once again to kindly refer to my doubt about the amendment of pleadings.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, generally, I have to support the Bill in the sense that it is a partial attempt to prevent the delay in the administration of justice. How far will we succeed in this present attempt is a matter to be seen. It is, as I said, only a partial attempt. I wish the Minister all success but there are many more things to be done here.

">The judiciary, as a whole, will have to be reconstructed. The delay is not procedural alone. It is due to some other reasons as well. Now, in the first case, it may be borne in mind that the appointment of judges to the higher judiciary is one of the convincing reasons for the delay.

">If I remember correctly, in a statement by the hon. Chief Justice of India, at present, there are about 154 vacancies left in the various High Courts and only about 40 cases are under active consideration. The remaining about 114 are still undecided. That is the experience of the higher judiciary. Then, with regard to the lower judiciary, the position is entirely alarming and if I remember correctly, the lowest judiciary ratio is in India.

">There is nothing to be compared between the population and the process of judicial arbitration. So, I would request my hon. friend, the Law Minister to bring in a legislation for speedy disposal of cases. I was a lawyer for over 40 years and I have my own bitter experiences. I had come across many civil cases which were filed during the British period and pending for decision for over 50 years. That was my experience. This must be the experience of so many people throughout India. So, we will have to change the system as a whole. We are following the Anglo-Saxon jurisprudence; it is not suited to our country.

">Even today we are basing many decision on oral evidence. Collecting oral evidence is a cumbersome affair. We will have to change the evidence system as a whole. The Indian Evidence Act which is the primary method of deciding cases is outdated. We are on the threshold of the new millennium and we will be governed by the rules of computers. We will have to admit as evidence even the technical data, now that the information technology is available.

">I welcome the move which was just made by the Minister of Parliamentary Affairs, for inclusion of evidence given by computers. It is quite welcome. In our country, evidence is admissible only in a restricted sense. Hearsay evidence is inadmissible and oral evidence will be admissible only when the person giving evidence has the firsthand knowledge. These are some of the matters which require immediate attention and immediate remedy.

">Another aspect that I would like to bring to the kind attention of the hon. Minister is that the judicial powers will have to be decentralised. We are living in an age of decentralization. You know that we have changed the system as a whole in the Executive by three-tier Panchayati Raj system. By that, we have decentralised the Executive powers to a very large extent. But even today, the judicial powers are centralized. For redressal of a grievance of an individual, one has the course open even to approach the Supreme Court.

">I would suggest that disputes between individuals can be settled at a lower level. Why should he go to the Supreme Court? Only matters related to involvement of individual freedom or fundamental rights or the basic structures of the Constitution, should go to that Court and then only there would be some meaning in taking them to the Apex Court. There are matters like property disputes or other disputes between individuals which are being unnecessarily taken to the Supreme Court as well as to the High Courts which takes a number of years to their disposal. So, such things should be prevented and avoided by decentralizing judicial powers.

">Decentralization will not hurt the feelings of the Apex court because if everything goes to the Apex Court, it would be detrimental to the interests of the democratic set up in our country. So, I think, the hon. Minister would consider the aspect of decentralization of powers. In that direction, I may submit that I agree with the present Government''s proposal for appointment of a Judicial Commission.

">The Judicial Commission is quite essential at present because the appointment of judges are left entirely to the Apex Court as well as the higher judiciary. The system should change. It is for an independent agency; it must be a Constitutional agency with full powers of appointment to the higher judiciary; and I feel that even transfers should be referred to the Judicial Commission. So, I would request the hon. Minister to bring in a legislation for the appointment of a Judicial Commission without delay.

">In the present context, I may draw your attention to the fact that recently there is an attempt by the highest Judicial body to evolve a Code of Conduct. According to them, that Code of Conduct would be an in-house procedure, it does not have legal sanctity and it does n

">not have any legal basis. The judges themselves would sit together and decide as to how they should act in future. It does not have any bearing on the society. The in-house procedure is not sufficient. That is why, the appointment of Judicial Commission is the most

essential at present. That must have led these people to think in terms of Code of Conduct. At the same time they say that it would be an in-house procedure. But it is not acceptable.

">We are still following the Contempt of Court Act. It is giving a blanket protection to the judiciary as a whole. They can do anything. The judiciary can act in any manner it likes. The citizens have no voice to make even healthy criticism. It is not permissible. In America, judges could be criticised, their actions could be criticised, and even their judgements could be criticised, but in India nobody is allowed to criticise the judgement or the absence of the judges in their official capacity. They are beyond criticism. The Contempt of Court Act is a colonial Act. Why should we not change this Act? It is unsuitable to the democratic constitution. So, we have to take immediate steps and amend the present Contempt of Court Act. Then only can we speak about judicial accountability. If we retain the Contempt of Court Act, how can we speak about the judicial accountability? So, we have to change the Contempt of Court Act basically to make the judges accountable to the society. No democratic society will give a licence to judiciary to act in whatever manner they like to act. I appreciate and applaud the position taken by the judiciary in many ways. They upheld the provisions of the basic features of the Constitution. In all these respects, the judiciary has to be commended. But that would not be a ground for holding that the judiciary is unaccountable. I would say that the judiciary also is accountable.

">In this background, I may be permitted to make certain suggestions. Now, under Section 89 you have three choices, viz. arbitration, conciliation and judicial settlements, including settlements through Lok Adalats and mediation. What I would like to suggest is that, it should lead to further delay in providing justice. If the cases are referred to to a particular authority and, suppose that authority finds that it is not within its jurisdiction, it sends the cases back. So, transferring the cases once again would cause delay and we have to prevent that delay. Please make some provisions in the rules that cases once delayed should not be re-transferred without proper and valid reasons. It should not be a delaying tactics. Municipal Courts or judges will send the cases to the Arbitration authority or the Adalats and the Adalats, on finding it difficult to settle them there, will send them back which would cause further delay in settling the cases. So, the purpose for which this amendment is passed will be defeated. So, I would suggest that there must be some safeguards with regard to the application or enforcement of Section 89. There must be safeguards to prevent the delay.

">So far as appeal by the Central judge is concerned, I would say that we all live in a society. We are all human beings. We have our own feelings. We have our political leniency. A judge is a person who comes from a particular State under a particular political influence. He will have his own feelings. Suppose a judge is giving a judgement in a writ petition, where can one appeal? We can appeal to the Division Bench. Division Bench can correct if at all there is any illegality or irregularity. But what is the remedy when that is taken away in certain cases? Petition must be maintainable in the Supreme Court and the writ petitioner should show that there is illegality with regard to the decision. Beyond that he cannot act. But this happens very rarely. So, I would suggest that we should make a comprehensive provision in the sense that a single judge''s decision is not appealable. We will have to make some safeguard.

">You have adopted the most important procedure of filing an Affidavit. In our State, we know what sort of Affidavits have been filed by the different Chief Ministers from time to time. The Minister is quite aware of it. So, if a case proceeds on the basis of an Affidavit being filed, it is not at all commendable. Moreover, in this context, I may add that Notary Public is all right to record evidence or act as commissioner in taking evidence. But that has to be followed with abundant caution because there are a number of complaints about the Notary Public. If they are given power to take evidence, it will make the decision-making process most difficult.

As the matter passes, I would say that it will create difficulty. We should be very vigilant about that. I do agree that the pronouncement of the judgement should be on the same day when it is delivered. Our present experience is, it takes two or three months to make the pronouncement. They take it for disposal but no judgement comes within a period of two or three months. This is our experience. So, the proposal to pronounce judgement on the day it is posted for disposal, is quite welcome.

With regard to decree, there is some difficulty. We have been given 15 days'' time. Until and unless we sanction sufficient staff to the courts, it is not practicable. Most of the courts working in our country are not sufficiently staffed. They do not have sufficient strength. If this is to be enforced, we will have to think in terms of strengthening the judiciary with sufficient staff and sufficient infrastructure.

The Government has fixed, 25,000 as the limit for non-appealable cases. Beyond that, appeal is allowed. This is a welcome step. But, in the changed circumstances I think it is a very small amount. We will have to raise it to at least 50,000.

Why should it be Rs.25,000? After all when this statute came into force, it was Rs.5,000. Why not raise it to Rs.50,000? I think it is a small amount and we will have to raise it. It is because all these cases will be taken in appeal.

Now filing of witness schedule along with the plaint is also quite welcome because there will be no posting for filing evidence or for filing witness schedule and all that. I do agree with this.

SHRI RAM JETHMALANI: Mr. Chairman, Sir, I would request the hon. Member to talk of those measures which are not welcome as it would save time. We all agree on those measures which are welcome. Let us talk of the differences.

SHRI VARKALA RADHAKRISHNAN : With regard to execution of summons, there will be difficult in the present set up. We will have to overcome that by subsequent amendments because the plaint is asked to take summons within two days. That would definitely create difficulties. If seven days'' time is given, it is all right. But two days'' time is very less. So, justice should not be denied in the name of delay. Now, two days time is permissible in the present amendment. But seven days'' time is reasonable.

As per clause 26, you have provided three adjournments. But what about the cost? No definite proposal is forthcoming? First application is allowable, but what is the cost? The second adjournment is also allowable and the third adjournment which is the final adjournment is also allowed. But you have not specifically provided whether it is high cost. I find no mention of it in the rules. I am sorry to say that. But if I am wrong I am prepared to correct it. There is no such provision in the Bill. If this provision would be made in the rules, that is quite welcome. So, there are other matters with which I am not dealing now.

In conclusion, I welcome the measure in the sense that it will prevent delays. Such a measure is quite essential in dealing with criminal cases also. I think he will be bringing another amendment to the Criminal Procedure Code in the near future. That is also quite

essential. So far as the determination of civil cases is concerned, to some extent, the amendment is quite welcome and I hope that the Government will be very serious in implementing these decisions. I hope the Civil Procedure Code Act will be implemented with all sincerity and people will be given a feeling that justice is not denied to them. With these words, I conclude.

SHRI RASHID ALVI (AMROHA): Sir, I support and welcome the Bill with certain suggestions. It is an effort in the right direction. But I have to say that it is a small effort in the right direction as we have to think about the entire system. This system does not suit to this country.

">Sir, whether it is judicial system or system of bureaucracy or system of police, the basic problem with our system is that they are adopted by us which were given by the British rulers.

">All these are adopted by us as given by the British rulers. The British rulers created this whole system to make us slaves. We got Independence and without giving a serious thought we have adopted it as it is. This present judicial system does not suit this country and the common man of this country.

">Delay in justice is certainly one of the problems. But the system is so complicated that for a common man or a poor person, it is difficult to get justice in this country. It is shameful on our part if I say that even after 52 years of Independence it is mentioned in the Punjab Jail Manual as to what shall be the uniform of an European jailor and what shall be the uniform of an Indian jailor. I want to bring this fact to the knowledge of the House as well as the hon. Minister. Alcohol consumption is allowed for an European prisoner whereas it is not allowed for an Indian prisoner inside the jail. We have never thought about it. It is shameful on our part.

">I do not want to discuss now about the system of bureaucracy and the system of police. But I want to way that even today, after 52 years of Independence, a District Magistrate is more or less like the Chief Minister of a district. Just after having qualified an examination he is ruling over the whole district. The post of District Magistrate was created by the British people to keep all of us continuously slaves. Even today we have adopted the same system. A common man, say an autorikshaw driver or a person lying on footpath, cannot approach a District Magistrate. He cannot dare enter his house which is like a palace. A poor autorikshaw driver cannot approach a Superintendent of Police. Not only poor people, even if a Member of the Legislative Assembly who is elected by more than two to three lakh people or a Member of Parliament who is elected by nearly twelve lakh people goes to a District Magistrate, especially if he is in the opposition, he cannot get justice from the District Magistrate. We will have to think over the whole system. My suggestion is that this House should constitute a Commission in this regard.

">I remember, in Supreme Court a dispute involving 18 acres of land which was filed in 1863 came up for hearing in 1993, after 130 years. The Supreme Court, after hearing the case, referred it back to the High Court. I have visited so many countries where I was told that in a criminal case a judge is empowered to visit the spot of the crime. He calls the accused to the spot; he calls the witness to the spot and decides as to what is right and what is wrong at the spot. It takes hardly three or four days, at the most a week. I do not want to take much time of the House. This sort of a system may be dangerous. I am not the final authority. The country which I referred to is Libya. I am not saying that we should adopt the system as it is. That was the reason why I was not naming the country.

">But what I want to say is that we should adopt whatever good things that are happening in the world.

">I want to narrate the incident of one criminal case. One person killed his wife knowingly well that it was wrong. After that, he was full of emotion and sentiments. Straightaway, he went to the police station and confessed that he had murdered his wife. Later on, he realised the very fact that he had done something wrong. He felt that he should not have confessed that before the police officer in the police station. He then engaged a good lawyer. That lawyer cross-examined that particular police officer who had put the accused behind the bars. The hon. Minister himself is a very good criminal lawyer. He knows this very fact very well. As I was telling, the lawyer cross-examined the police officer. He asked one question. He asked the police officer that when the accused came to him and made a confession, was it true that the police officer offered a cup of tea? That police officer was full of fears and he was scared of his job. He immediately said that it was not possible and he did not offer a cup of tea to the accused. Then, again, the lawyer asked the police officer whether he put the accused behind the bars and took the statement. The police officer said: "Yes, I took his statement." The point is that in the eyes of law, if anybody is making a confession under pressure is no confession at all. Just on this very ground, he was released while the court knew the very fact, the area knew the very fact that the accused himself had made the confession that he had murdered his wife. So, what I am saying is that the system is not fully suitable to this country.

">1542 hours (Shri K. Yerrannaidu - in the Chair)

">Mr. Chairman, my request is that we should think over it and we should constitute a Commission.

">Now, I want to give some suggestions. As far as this Amendment Bill is concerned, the hon. Minister has made a provision in Section 10 by saying:

">"...by a Single Judge of a High Court, no further appeal shall lie from the judgement, decision or order of such Single Judge."

">It is all right. It will make speedy decision possible. But my submission is that a common man is living far away from Delhi. He may be living in Manipur, South India, Kerala etc. It will be difficult for him to get justice. It is very expensive to get justice from the Supreme Court. It will be very difficult for such a person to come to Delhi to file an appeal and get justice. I think the hon. Minister should reconsider it and the provision should be there that such a person must be allowed to go to a D.B. He can get justice there also.

">As far as Clause 2 is concerned, it is stated: "In every plaint, facts shall be proved by Affidavit." My amendment is as follows: "If facts shall be supported by the Affidavit."

">The third point is that this Amendment Bill has empowered the Oath Commissioners to record the evidence. The reputation of the Oath Commissioners has never been good in this country. I am not making allegations against every Oath Commissioner. But this is the procedure that just after having stamped on a paper, he charge rupees five or ten. It is his habit. In serious cases, if he is allowed

to record the evidence, then it will not at all be good and it will be difficult to get justice.

">There is one more thing which I want to say. Our system should be like this that a common man should have full belief in the judiciary. I want to narrate one incident here that in 1998 in Uttar Pradesh, one of the Chief Ministers came to occupy the office for one or two days. He went to the Allahabad High Court. Just within 24 hours, he got an order and he took the charge in Uttar Pradesh again.

">But when the BSP filed a case in the Supreme Court under the provision of the Anti-Defection Law and it came up before a Bench of three judges in the Supreme Court, one judge was of the opinion that this party is right and these MLAs would cease to be Members. At the same time, another judge was against it and the then Chief Justice of the Supreme Court was of the opinion that this case should be referred to the Constitution Bench. I think it will come up after five years and God knows better when it will come.

">Sir, I remember one case where an industrialist, Shri Thapar got bail during the night, at 12 o''clock from the Supreme Court. He did not bother to go to the District court, he did not go to the High Court; instead he went to the Supreme court and got bail late in the night, at 12 o''clock from the residence of the Supreme Court judge. Such type of cases creates so many doubts in the minds of the people. So, my submission is, if the common man of the country leaves his fate in the judiciary it will be the worst day for the democracy and for our country. In the end, I, once again, request that a Commission should be constituted to reconsider the system in the country.

SHRI V.P. SINGH BADNORE (BHILWARA): Mr. Chairman, Sir, I rise to support the Code of Civil Procedure (Amendment) Bill. I think, this Bill is really praiseworthy. Nobody could have piloted it better and would have done a better job than the hon. Minister. Firstly, I suppose, it is his dream that he can come up with a Bill like this, to shorten the procedure for getting justice. There is a famous saying that `justice delayed is justice denied'' and that is what, I suppose, must be at the back of the Minister''s mind.

">Sir, I can go on talking about a lot of good things about the Bill. But they have, already, been put forth in this House. Let me put forth some other hurdles, some other bottlenecks which need to be addressed and which may not be there in this Bill. I suppose, I may not have the suggestions, but he may have the answers. In the rural India, when the poor people want to knock the doors of justice, they have a problem. Firstly, they do not understand law and the lawyers also lead them astray, because it is in the interest of the lawyers that the case is kept pending. If it is kept pending, the lawyers benefit from it. Will the Minister come out with some measures so that these hurdles can be addressed?

">Sir, I suppose, for a person like me, it would be a nightmarish situation that I get into a litigation and I would like to avoid it. An ordinary man would hate to be going and knocking the doors of justice and that fear should also be addressed. In the rural India, it is also in the interest of the rich and the influential that a case goes on and on, because the rich get advantage out of it.

">He tires out the common man. It tires out the poor. It tires out the man in the rural India who is totally dependent on one case. He would like to go in for arbitration or some sort of `samjhauta'' or the other. You must also look into that. I do not know if you have the answers. But these are the only two or three points which I wanted to raise. Thank you very much. (ends)

">श्री प्रभुनाथ सिंह (महाराजगंज, बिहार) : सभापति जी, यह बहुत ही अच्छा बिल आया है और हम बिल के समर्थन में बोलने के लिए खड़े हुए हैं। न्यायिक प्रक्रिया में जो विलम्ब होता है उसका कारण निश्चित तौर पर जजों की कमी तो है ही, इसके साथ ही थोड़ा व्यावहारिक दृष्टिकोण को भी देखना पड़ेगा। हमने व्यावहारिक दृष्टिकोण इसलिए कहा, क्योंकि जो सिविल मामले होते हैं उनकी शुरुआत कार्यपालिका से होती है और जो अपाराधिक मामले होते हैं उनकी शुरुआत पुलिस से होती है। हमें लगता है कि शुरुआत के दिनों में ही मामले का आधार दुरुस्त नहीं होता और जो गलत या सही आधार बन कर न्यायालय में आता है उसी पर न्यायपालिका में विचार किया जाता है।

">

">महोदय, हम आपको बताना चाहते हैं कि जो मामले पुलिस में जाते हैं वे किसी न किसी के बयान पर आधारित होते हैं और पुलिस की कार्यवाही साक्षय के आधार पर होती है। जब मामले की जांच पुलिस को सौंपी गई तो किसी भी चार्जशीट में हमने अभी तक यह नहीं देखा, जिसमें पुलिस लिख कर भेजती है कि प्रथम दृष्टि आरोप प्रमाणित होता है। वह कहीं भी अपने विवेक या गोपनीय जांच का प्रयोग डायरी में अंकित नहीं करती है। उसके बाद जो न्यायपालिका का कार्य शुरु होता है, उसकी निश्चित तौर पर काफी विलम्ब की प्रक्रिया है। उस प्रक्रिया में सुधार के लिए मंत्री जी द्वारा जो बिल लाया गया है वह काफी सराहनीय है। इसमें हम अपने कुछ सुझाव देना चाहेंगे, अगर मंत्री जी को ये सुझाव अच्छे लगें तो इन पर जरूर अमल करें।

">

">आपने बताया कि बहुत से ऐसे मामले हैं, जिन्हें मध्यस्थता करके निपटाना आवश्यक होगा। हम मानते हैं कि यह समाज और जनता के हित में होगा, लेकिन मध्यस्थता के आधार क्या होंगे, इसे तय करना पड़ेगा। जब तक आप मध्यस्थता के आधार को कानूनी रूप नहीं देंगे, जैसे गांवों में मध्यस्थता होती है, जिसे हम लोग पंचायत कहते हैं, उसके माध्यम से नहीं होगा। अगर इस मध्यस्थता का आधार मेरी नजर में ऐसा हो कि मुइई/मुद्दालय, दोनों पक्षों से न्यायालय दो-दो पंच ले और वे दोनों मिल कर तीसरा चुन लें और यदि वे पांचों मिल कर सर्वसम्मति से निर्णय करते हैं तो उसे न्यायालय को स्वीकार करना चाहिए। उसमें एक समय-सीमा भी तय कर देनी चाहिए कि अगर २० दिन या एक महीने के अंदर मध्यस्थता करके यह मामला आता है तो उसका समाधान माना जाएगा और उस पर न्यायालय अपनी मोहर लगा दे। जब तक मध्यस्थता को कोई कानूनी रूप नहीं दिया जाएगा तब तक मध्यस्थता की बात नहीं चलेगी।

">

">साक्षय के संबंध में मंत्री जी ने कहा कि हलफनामा देना होगा और शायद नोटरी मजिस्ट्रेट के माध्यम से साक्षय लिए जाएंगे। हम किसी वर्ग विशेष पर कोई आरोप लगाना नहीं चाहते, लेकिन मंत्री जी हम यह बताना चाहते हैं कि

">

">नौटेरी मजिस्ट्रेट वही लोग होते हैं जिनकी कोर्ट में पूछ नहीं होती है। इस बात में सच्चाई है। नौटेरी मजिस्ट्रेट को सरकार ५००-१००० रुपये की कमाई तो करा ही देती है। अब जो आप व्यवस्था कराने जा रहे हैं इसमें उनको पांच हजार रुपये की कमाई जरूर हो जायेगी लेकिन न्याय प्रक्रिया में इससे काफी रुकावटें और दिक्कतें पैदा होंगी। कारण यह है कि जो शपथ की व्यवस्था है वह जटिल है। आपको हाईकोर्ट का अनुभव है लेकिन लोअर कोर्ट का शायद अनुभव न हो, हमें लोअर कोर्ट में रहने का मौका मिला है, हम आपको अनुभव की बात बताएंगे। नौटेरी मजिस्ट्रेट के यहां एफीडैविट के लिए किसी व्यक्ति को जाना नहीं पड़ता है, वहां तो फीस सात रुपये या दस रुपये तय रहती है, वह तो दस्तखत करके भेज देता है। इसमें व्यवस्था कर देंगे तो १५-२० रुपये हो फीस हो जायेगी। लेकिन न्यायालय में जो बयान होता है वह न्यायाधीश के

समक्ष होता है। एफीडैविट का मामला हो जायेगा तो वकील बताएगा कि यह बात लीक हो गयी तो यह अच्छा होगा, वह बात लीक हो गयी तो बुरा होगा। इसलिए साक्षय भी निष्पक्ष नहीं हो पायेगा। इसलिए आप जो साक्षय की व्यवस्था कर रहे हैं तो कम से कम कार्यपालक दंडाधिकारी के यहां शपथ की व्यवस्था करा दें या न्यायपालिका से जो नया मजिस्ट्रेट प्रतिनियुक्त कर देंगे तो उचित व्यवस्था होगी। इस व्यवस्था में साक्षय दुरुस्त नहीं हो पायेगा।

">

">समापति जी, अंतरिम न्याय के संबंध में मंत्री जी ने कहा है कि जो पैसा जमा करेगा उसे अंतरिम न्याय मिलेगा। देश में न्याय तो पहले ही महंगा होता जा रहा है। आपको तो अनुभव है। एक मुकदमें में मुझे भी सुप्रीम कोर्ट जाना पड़ा था। वहां ७०००० रुपये फीस थी जो मुझे हर तारीख पर देनी पड़ती थी। आप पैसे की बात करेंगे तो धनी लोग होंगे वे तो पैसा जमा करके अंतरिम रिलीफ पा लेंगे, लेकिन गरीब लोगों के लिए आपने क्या व्यवस्था सोची है। इसलिए अंतरिम न्याय जो मिलता है उस अंतरिम रिलीफ के लिए पैसा जमा न कराना पड़े और एक समय सीमा निश्चित कर दी जाये कि एक या दो

">

महीने के अंदर यह पिटीशन डिस्पोज-ऑफ हो जायेगी। पैसा जमा करके अंतरिम न्याय देना इंसाफ देना नहीं होगा बल्कि अगर ऐसा होगा तो केवल पैसे वालों को ही न्याय मिलेगा, गरीब आदमी को न्याय नहीं मिल पायेगा। इसलिए आप इस पर गंभीरतापूर्वक सोचिये और इसमें तब्दीली लाइये।

अखबार में हम किसी सेठी कमीशन की रिपोर्ट पढ़ रहे थे। प्रधान मंत्री की मौजूदगी में फोटो छपी है जिसमें उन्होंने बहुत सारे सुझाव दिये हैं।

MR. CHAIRMAN : Now, it is 4 p.m. Shri Prabhunath Singh, you will continue when it is taken up next time.